



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0033]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA-2023-0033 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov/, insert the docket number (FMCSA-2023-0033) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- Mail: Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2023-0033), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/docket?D=FMCSA-2023-0033. Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2023-0033) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 17 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication, and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a notice of final disposition titled, “Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,” (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Gregory Alves

Gregory Alves is a 27-year-old class E license holder in Florida. They have a history of seizure disorder and have been seizure free since 2009. They take anti-seizure medication with the dosage and frequency remaining the same since 2017. Their physician states that they are supportive of Gregory Alves receiving an exemption.

Cadan Asterino

Cadan Asterino is a 22-year-old class D license holder in Arizona. They have a history of generalized epilepsy and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Cadan Asterino receiving an exemption.

Kevin Atwood

Kevin Atwood is a 53-year-old class O license holder in Michigan. They have a history of oligodendroglioma and have been seizure free since September 2013. They take anti-seizure medication with the dosage and frequency remaining the same since March 2015. Their physician states that they are supportive of Kevin Atwood receiving an exemption.

Jon Brandy

Jon Brandy is a 56-year-old class A license holder in Arkansas. They have a history of seizures and have been seizure free since 2013. They take anti-seizure medication with the dosage and frequency remaining the same since 2013. Their physician states that they are supportive of Jon Brandy receiving an exemption.

Sean Duffy

Sean Duffy is a 21-year-old class D license holder in New Jersey. They have a history of seizure disorder and have been seizure free since November 2013. They take anti-seizure medication with the dosage and frequency remaining the same since November 2013. Their physician states that they are supportive of Sean Duffy receiving an exemption.

Arlen Graff

Arlen Graff is a 66-year-old class D license holder in Minnesota. They have a history of seizure disorder and have been seizure free since 2004. They take anti-seizure medication with the dosage and frequency remaining the same since March 2011. Their physician states that they are supportive of Arlen Graff receiving an exemption.

Cody Helmke

Cody Helmke is a 33-year-old class B commercial driver's license (CDL) holder in Ohio. They have a history of generalized epilepsy and have been seizure free since January 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2015. Their physician states that they are supportive of Cody Helmke receiving an exemption.

Brian Law

Brian Law is a 41-year-old class A CDL holder in Colorado. They have a history of seizures and have been seizure free since 2005. They take anti-seizure medication with the dosage and frequency remaining the same since 2015. Their physician states that they are supportive of Brian Law receiving an exemption.

Thomas Lepley

Thomas Lepley is a 34-year-old class A CDL holder in Pennsylvania. They have a history of provoked seizures and have been seizure free since May 2022. They take anti-seizure medication with the dosage and frequency remaining the same since May 2022. Their physician states that they are supportive of Thomas Lepley receiving an exemption.

Daniel Lozier

Daniel Lozier is a 32-year-old class D license holder in Ohio. They have a history of epilepsy and have been seizure free since 2007. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Daniel Lozier receiving an exemption.

Kevin Moore

Kevin Moore is a 57-year-old enhanced driver license holder in Washington. They have a history of seizure disorder and have been seizure free since July 2000. They take anti-seizure medication with the dosage and frequency remaining the same since 2001. Their physician states that they are supportive of Kevin Moore receiving an exemption.

Jeffrey Raddatz

Jeffrey Raddatz is a 54-year-old class C license holder in Iowa. They have a history of complex partial epilepsy and have been seizure free since October 2014. They take anti-seizure medication with the dosage and frequency remaining the same since November 2014. Their physician states that they are supportive of Jeffrey Raddatz receiving an exemption.

Sergio Soto

Sergio Soto is a 56-year-old class A license holder in Arizona. They have a history of epilepsy and have been seizure free since September 2013. They take anti-seizure medication with the dosage and frequency remaining the same since September 2013. Their physician states that they are supportive of Sergio Soto receiving an exemption.

Caleb Stinson

Caleb Stinson is a 23-year-old class A CDL holder in Minnesota. They have a history of epilepsy and have been seizure free since March 2013. They take anti-seizure

medication with the dosage and frequency remaining the same since 2017. Their physician states that they are supportive of Caleb Stinson receiving an exemption.

Anthony Whitt

Anthony Whitt is a 54-year-old class B CDL holder in Tennessee. They have a history of focal epilepsy and have been seizure free since 1990. They take anti-seizure medication with the dosage and frequency remaining the same since 2017. Their physician states that they are supportive of Anthony Whitt receiving an exemption.

Stephen Wilson

Stephen Wilson is a 41-year-old class C license holder in Pennsylvania. They have a history of partial complex seizures and have been seizure free since 2002. They take anti-seizure medication with the dosage and frequency remaining the same since 2018. Their physician states that they are supportive of Stephen Wilson receiving an exemption.

Jacob Woliver

Jacob Woliver is a 26-year-old class C license holder in California. They have a history of focal epilepsy and have been seizure free since December 2003. They take anti-seizure medication with the dosage and frequency remaining the same since 2008. Their physician states that they are supportive of Jacob Woliver receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the DATES section of the notice.

Larry W. Minor,
Associate Administrator for Policy.

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